IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL APPLICATION NO.769 OF 2006
IN
CIVIL APPLICATION NO.2879 OF 2002
IN
CIVIL APPLICATION NO.299 OF 2001
IN
WRIT PETITION NO.19 OF 2000

Arif Ahmed Nizamul Haque Qureshi .... Petitioner/ Applicant

Vs.

Nuclear Power Corporation & Anr. .... Respondents

Shri Niyaz Ahmed for the Petitioner.

CORAM: R.M.S. KHANDEPARKAR &
NARESH H. PATIL, JJ.

DATED: SEPTEMBER 01, 2006

P.C:

1. Heard the learned Advocate for the petitioner/applicant.

2. When the Advocate for the petitioner was asked to disclose from the application the facts which would justify the absence of the petitioner or the Advocate on 19-11-2005, the learned Advocate drew our attention to para Nos.2 and 3 of the application. However, those paras relate to 26-7-2000 and nowhere refer to any cause for the absence of the petitioner or his Advocate on 19-11-2005. In fact, initially the writ petition was dismissed on 26-7-2000 on account of failure on the part

of the petitioner and his Advocate to appear in the matter. Thereafter, application for restoration was filed, which was dismissed for default on 18-8-2001. Thereafter another application was filed for restoration of the restoration application and the writ petition which also came to be dismissed for default on 19-11-2005. Apparently, the petitioner is merely fond of filing petition and applications, without bothering to attend the Court at the time of hearing of the matter or to pursue the matter in the manner it was required to be pursued. Apart from dismissal of the petition for default, even the two applications filed earlier for restoration have been dismissed and in the present application the petitioner has not been able to disclose the cause for his absence on 19-11-2005. The only explanation which the learned Advocate submits is that the petitioner suffers from depression and even continues to suffer so and that is the only reason for failure on the part of the petitioner for his absence. Undisputedly, the matter is not to be argued by the petitioner himself but by his Advocate. Being so, it was necessary for the petitioner to disclose in his application the cause for non-appearance of the petitioner as well as of his Advocate. Undisputedly, the application nowhere discloses any cause for the absence of the Advocate either on 26-7-2000 or on 18-8-2001 or on 19-11-2005.

3. At this stage, the learned Advocate for the petitioner craves leave to withdraw the application with liberty to file a fresh application disclosing all the facts.

4. As far as the withdrawal of the application is concerned, certainly it is a matter of right and the applicant can withdraw such application. However, question of grant of liberty to file fresh application depends upon the facts of each case. In the case in hand, as the records disclose, the petitioner is in the habit of merely filing application without bothering to ensure the presence of the Advocate to argue the matter. Twice the applications were dismissed for default, apart from the dismissal of the writ petition itself. In the background of these facts, we do not find any justification for exercise of discretion to grant liberty to file a fresh application. In fact, if at all there was any cause for non-appearance of the Advocate for the petitioner on 19-11-2005 as well as on 18-8-2001 and 26-7-2000, it should have been disclosed in the present application itself. The Advocate for the petitioner or the petitioner could not have waited for the Court to ask for the same and thereafter to think about the withdrawal of the application with liberty to file a fresh application disclosing those facts. Any

such attempt on the part of the petitioner would amount to an afterthought with the intention to fill up the lacunae, merely because the Court had questioned about the said cause.

5. In the circumstances, therefore, we do not find any justification for grant of liberty to file fresh application while allowing the petitioner to withdraw the present application. Hence the application is disposed of as withdrawn.

(Naresh H. Patil, J.) (R.M.S. Khandeparkar, J.)

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